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Applicant:	Forte	Docket No.:	13969.1
Serial No.:	09/374,117	Group:	1771
Confirmation No:	3340	Examiner:	Vo, Hai
Filed:	08/16/1999	Date:	January 21, 2005

For: Multilayer Breathable Film and a
Method for Making a Multilayer
Breathable Film

CERTIFICATE OF FACSIMILE TRANSMISSION

I, Faye Farrell, hereby certify that on January 21, 2005, this document is being faxed to The United States Patent and Trademark Office at 703-872-9306.

By: 
Faye Farrell

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

AMENDMENT

Please amend the above-identified application as follows:

Amendments to the Claims are reflected in the listing of claims which begins on page 2 of this paper.

Remarks begin on page 4 of this paper.

This listing of claims will replace all prior versions, and listings, of claims in the application:

Listing of Claims:

Claims 1 – 25 (Canceled)

26. (Currently amended) A multilayer breathable film having the combination of properties of:

- (i) providing a barrier to microorganisms; and
- (ii) providing a barrier to blood and bodily fluids;

said breathable film comprising at least a three-layer film having as a minimum the following structure:
C:D:C;

where C comprises an outer monolithic layer containing a hydrophilic polymeric resin capable of absorbing and desorbing moisture and providing a barrier to water and microorganisms, said C layer being substantially free of particulate filler; and, D comprises a microporous adhesive core layer for bonding said C layers together, wherein said C layer substantially prevents the buildup of particulate filler material on a die during formation of said multilayer breathable film, and wherein said microporous adhesive core layer comprises particulate filler having an average particle size between about .8 microns and about 3 microns, where ~~upon stretching~~ the microporous adhesive [[the]] core layer has microvoids in a range from about 27.6% to about 42%, said microporous adhesive core layer being constructed and arranged to provide the passage of gaseous water but substantially prevent the passage of liquid water.

27. (Previously presented) A film according to claim 26, wherein said layers have the following volume ratio:

about 2 to about 98% by volume for said D layer; and

about 1 to about 49% by volume for each C layer, the volume % being based on the total volume of said breathable film.

28. (Original) A film according to claim 26, wherein said layers have the following volume ratio:
about 80 to about 98% by volume for said D layer; and

about 1 to about 10% by volume for each C layer, the volume % being based on the total volume of said breathable film.

29. (Original) A film according to claim 26, wherein said layers have the following volume ratio:

about 90 to about 98% by volume for said D layer; and

about 1 to about 5% by volume for each C layer, the volume % being based on the total volume of said breathable film.

Claims 30 – 31 (Canceled)

32. (Currently amended) A multilayer breathable film having the combination of properties of:

- (i) providing a barrier to microorganisms; and
- (ii) providing a barrier to blood and bodily fluids;

said breathable film comprising at least a coextruded three-layer film having as a minimum the structure C:D:C; wherein C comprises an outer monolithic film layer containing a hydrophilic polymeric resin capable of absorbing and desorbing moisture and providing a barrier to water and microorganisms, said C layer being substantially free of particulate filler; and, D comprises an adhesive core film layer for bonding said C layers together, the adhesive core film layer including micropores, the micropores being constructed and arranged to permit the passage of gaseous water and to provide a barrier to the passage of liquid water;

wherein said adhesive core film layer further comprises particulate filler having an average particle size between about .8 microns and about 3 microns, where ~~upon stretching~~ the adhesive core film layer has microvoids in a range of about 27.6% to about 42%; and further wherein the adhesive core film layer is bonded to the outer monolithic film layers along an interface, the bonding at the interface being substantially complete and uniform.

Remarks

This amendment is filed responsive to the Office communication mailed December 29, 2004 holding noncompliant Applicant's previously filed amendment pursuant to 37 CFR 41.50(b) to reopen prosecution before the Examiner to consider a new ground of rejection entered by the Board of Patent Appeals and Interferences in its decision on Appeal No. 2004-2210 mailed Sept. 30, 2004. Claims 26-29 and 32 stand rejected under 35 U.S.C. 112, second paragraph, as indefinite. Reconsideration by the Examiner is requested in light of the above amendments and the remarks which follow including Applicant's Terminal Disclaimer provided herewith.

The previously filed amendment was considered noncompliant as lacking a complete listing of all the claims and a status identifier for claim 27. In addition, the communication suggested that a terminal disclaimer may be needed.

The above amendments are believed to be compliant and address each of the issues raised by the Board of Patent Appeals and Interferences in its rejection under 35 U.S.C. 112, second paragraph. Specifically, any uncertainty about the degree of filler content that results in a layer being "substantially free of particulate filler" is removed by deletion of the word "substantially". As amended, the layers "C" are free of filler. Support for the amendment may be found, for example, at page 40, line 5, of applicant's specification. Also, the reference to applicant's Examples 6 and 7 by the Board should be understood in the context that these examples demonstrate the ability to stretch microporous, i.e. filler containing, layers at greater draw ratios. As such, they are not intended to represent examples of the invention including monolithic layers. The second issue raised concerning the future reference suggested by the phrase "where upon" has been addressed by deletion of that phrase so that the claims now call for the microvoids to be present. As amended, applicant's claims 26-29 and 32 are believed to satisfy the requirements of 35 U.S.C. 112, second paragraph.

The Board has also raised a question about the filler content of the film layers of McCormack et al. USP 6,075,179 ("McCormack") Example 3 since the filler content of Techmer S110128E62 antiblock has not been specified. Applicant respectfully contends that one of skill will readily appreciate that antiblock compositions contain filler in order to perform the required function. See, for example, the Spartech Polycorn Products literature provided herewith. As noted, antiblocks act through a dispersion of inorganic solids that "rougher" the film surface. Particularly for the McCormack embodiments where the skin layers have adhesive properties, such an antiblock will be important to avoid film blocking. Thus, one skilled in the art would not be led by McCormack to filler free skin layers in the sense of the